UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

LINK CARTAGE COMPANY, INC. AND LAKEVILLE MOTOR EXPRESS, INC., A SINGLE EMPLOYER[1]

Employer

and

TRUCK DRIVERS, OIL DRIVERS, FILLING STATION AND PLATFORM WORKERS, LOCAL UNION NO. 705, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA.

Petitioner

Case 13-RC-20430

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

3. The labor organization(*s*) involved claim(*s*) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(*c*)(*1*) and Section 2(*6*) and (*7*) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(*b*) of the Act:[4]

All full and part time Chicago metro delivery and over the road drivers employed by the Employer at its facility currently located at 8700 Joliet Road, McCook, Illinois; but excluding all dock men, spotters, clerical workers, janitorial workers, dispatcher, mechanics, guards, supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(*s*) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(*s*) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible

shall vote whether or not they desire to be represented for collective bargaining purposes by Truck Drivers, Oil Drivers, Filling Station and Platform Workers, Local Union No. 705, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994).** Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before October 10, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by October 16, 2000.

DATED October 2, 2000 at Chicago, Illinois.

/s/Elizabeth Kinney
Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.
2/ The arguments advanced by the parties at the hearing and in their post-hearing briefs have been carefully considered. The Employer has filed a Motion to Strike portions of Petitioner's brief, contending that the brief contained "un-attributed and erroneous statements" of fact that were not supported by record evidence. The facts found herein are based on an independent review of the record adduced at the hearing; accordingly, the Motion to Strike is moot and is denied.
3/ The Employer is a corporation engaged in operating the business of local pickup and delivery of interstate freight.
4/ The Petitioner seeks to represent a unit of all permanent full time and regular part time Chicago metro delivery and over the road drivers employed at the Employer's McCook facility, but excluding temporary drivers provided to Employer by various other companies. The Petitioner takes the position that Link Cartage Company, Inc., hereinafter called Link and Lakeville Motor Express, Inc., hereinafter called Lakeville, are joint employers, or in the alternative, a single employer or alter egos. Link denies that it shares either a joint or single employer relationship with Lakeville, and contends that the only appropriate bargaining unit includes all temporary drivers dispatched to the McCook facility. The Petitioner contends, however, that temporary drivers do not share an overwhelming community of interest with Employer's permanent full time and regular part time drivers to warrant their inclusion in the bargaining unit.

FACTS

The record shows that Link, a Minnesota corporation, is engaged in the business of local pickup and delivery of interstate freight. Link coordinates and operates its pickup and delivery unit from a terminal located at 8700 Joliet Road, McCook, Illinois. Lakeville, also headquartered in Minnesota, is a common carrier, which operates within seven midwestern states including Illinois. Lakeville and three other regional common carriers make up "Express Link," an interstate freight delivery system, which provides nationwide coverage for freight delivery. Peter Martin is the President of both Link and Lakeville. John Wren and Joe Wren, the owners of Lakeville, are also owners of Link with Peter Martin and Tom Hughes. Tom Daker is the terminal manager at Link and reports to Peter Martin.

As the terminal manager, Daker oversees the labor relations at Link's facility. Daker coordinates the pickup and delivery schedules for all drivers and is responsible for all issues relating to employment, job performance, and discipline of employees at the Link's McCook facility. Daker testified that he makes all decisions relating to the operations of Link autonomously and could not recall any situation when he had to consult Martin prior to making a decision or seeking approval on a decision he had made.

The relationship between Link and Lakeville is defined by a cartage operator and equipment lease agreement covering the local pickup and delivery service that Link provides to Lakeville. This agreement states that Link's drivers will not be employees of Lakeville. In addition, Link leases the majority of its equipment from Lakeville and is responsible for the maintenance and repair of the equipment. All of Link's drivers use

Lakeville's bills of lading and driver manifests on all of their routes. Lakeville, as the common carrier, assumes all liability for claims, damages, shortages, and expedition of shipments.

Link leases its McCook facility from Estes Express Lines, another carrier within the Express Link entity. At this facility, Link has five Lakeville sales representatives under its domain. These five employees are not employed by Link. Also at this facility, Link shares a common fax number with Lakeville's sales representatives. The parties stipulate that Link maintains a toll-free number.

Link does not have its own safety or human resources departments. Therefore, Link uses Lakeville's safety department to administer pre-employment and random drug testing, training seminars, road tests, and all other Department of Transportation requirements for truck drivers. These services are not provided for in the cartage operator and equipment lease agreement between Link and Lakeville.

At various times when Link's terminal manager position has been vacant, it has been temporarily filled by Lakeville's Regional Director of Sales and Marketing Mike Brown and Lakeville sales representatives Jim Updegraff and Brian Moriarty. Brown also has participated in driver evaluation sessions with current Terminal Manager Daker.

A total of seventeen permanent full time drivers work out of the McCook facility, spread out across three shifts. Link requires all permanent driver candidates to fill out a standard application form, undergo a physical exam and a drug test, meet all Department of Transportation mandates, and have a CDL with a hazardous materials endorsement. Hired drivers are given uniforms which bear the initials "LME," which stands for Lakeville Motor Express. Drivers punch their timecards at the start and end of each day. Daker reviews employee timecards and sends them to Linda Grafstrom, an accountant located in Minnesota, who then processes them and sends employees' paychecks to the McCook facility for distribution. Paychecks received by Link's permanent employees bear the name Link.

In addition to the permanent drivers, Link utilizes temporary drivers provided to it by various other companies, such as Complete Trucking, Extreme Express, and Road Runner 2000. While Link generally maintains at least three temporary drivers at all times, it may use more as its workload situation requires. The supplier companies screen, hire, and maintain a pool of qualified drivers for the referrals they provide to companies such as Link. The supplier companies determine all terms and conditions of employment for its temporary drivers, including wages, medical and pension benefits, vacation entitlements, sick pay eligibility, and attendance policy. Temporary drivers are terminated by the supplier companies, not by Link or other user companies. Discipline of temporary drivers by Link has been limited to Daker speaking to drivers about problems related to filling out paperwork.

When Link needs temporary drivers, Daker telephones a supplier company and requests the number of drivers it needs for the day. When requesting temporary drivers,

Link can request or refuse certain drivers. At Link's facility, temporary drivers maintain timecards for the hours worked for Link. On a weekly basis, Link sends the original timecards to Grafstrom for recordkeeping purposes and sends a copy to the supplier company for invoicing. The supplier company then invoices Link for the temporary drivers' work. Link pays the supplier company an hourly rate for the driver and his tractor. Link has no knowledge of how much the temporary drivers referred to its location is paid or what type of benefits a particular supplier company provides to these drivers.

Both permanent and temporary drivers employed at the McCook facility perform the same job functions and work under the supervision of the terminal manager. Each morning, both permanent and temporary drivers are given delivery receipts, printed city manifests, and blank manifests for pickups and deliveries. Neither permanent or temporary drivers are required by Link to own their own tractor to be employed. Link also provides all drivers with radios with which they can call in pickups and deliveries as well as any problems that may occur in route. Any problems that arise while drivers are in route are called in to Link's dispatcher. However, temporary employees must contact their supplier company with issues such as calling in sick, taking a vacation day, or problems related to the supplier company's equipment.

In the past, Link has several hired temporary drivers who have worked with Link frequently as permanent full time drivers. These employees, Joe Cernuska, Eric Marro, and Mark Krantz, previously worked for Extreme Express. When a temporary driver is hired by Link, he is required to undergo Link's application and hiring process, including a physical and drug test. Although the same information may exist on file with the supplier company, Link conducts its own application process as described above. For seniority purposes, former temporary drivers are added to the list by their application date and are not credited with time worked as temporaries.

ANALYSIS

The Relationship between Link and Lakeville

At issue is whether Link and Lakeville Motor Express are a single employer or alter egos, or in the alternative, joint employers, under the Act. A "single employer" relationship exists where multiple employing entities are in reality part of a single integrated enterprise. *Centurion Auto Transport*, 329 NLRB No. 42 (September 30, 1999). The Board considers four principal factors in determining whether the integration is sufficient for single employer status: (1) common ownership; (2) common management; (3) functional interrelationship of operations; and (4) centralized control of labor relations. Not all factors need to be present to establish a single employer relationship. A single employer relationship is characterized by the absence of an arm's length relationship found among non-integrated companies, and the fundamental inquiry is whether there exists overall control of critical matters at a policy level. *Id.* Similarly, two enterprises will be found to be alter egos where they "have substantially identical management, business purpose, operation, equipment, customers and supervision as well

as ownership." *Advance Electric*, 268 NLRB 1001, 1002 (1984); *Denzel S. Alkire*, 259 NLRB 1323, 1324 (1982).

The Board has held that the existence of a joint employer relationship is essentially a factual issue that depends on the control that one employer exercises over the labor relations of another employer. *Executive Cleaning Services*, 315 NLRB 227 (1994); *TLI, Inc.*, 271 NLRB 798 (1984). Under the established standard for determining whether entities are joint employers, "there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction." *TLI, Inc.*, supra, citing *Laerco Transportation & Warehouse*, 269 NLRB 324 (1984). Where it is found that "two separate entities share or codetermine those matters governing the essential terms and conditions of employment, they are to be considered joint employers for the purposes of the Act." *M. B. Sturgis*, 331 NLRB No. 173 slip op. at 4 (August 25, 2000), citing *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1123 (3d. Cir. 1982); *Riverdale Nursing Home*, 317 NLRB 881, 882 (1995); *TLI, Inc.*, 271 NLRB at 798.

Based on the facts of the instant case, I find that Link and Lakeville are a single employer under the Act. The evidence shows that there is common ownership; John and Joseph Wren own all of Lakeville and a significant portion of Link, and the remaining owners of Link are present or recently retired officers of Lakeville. Similarly, there is common management of both companies; Peter Martin is president of both companies, and until recently, Link secretary Thomas Hughes was president of Lakeville, and remains active as a member of Lakeville's management team.

The evidence shows that there is a functional interrelationship of operations between Link and Lakeville. By requiring its drivers to wear uniforms that bear Lakeville's name, hand out Lakeville's brochures and paraphernalia to customers, and solely use Lakeville's paperworks, Link represents to the public that it is essentially operating as a Chicago-area terminal of Lakeville. That Link represents itself as Lakeville to the public is further supported by the fact that Link's nationwide toll-free number is answered as Lakeville Motor Express, not Link. The record also states that only 40% of Link's freight is handled for other carriers and that the balance, or the majority of Link's freight is handled for Lakeville. Even the non-Lakeville freight that Link handles is for one of the other companies that, like Lakeville, are part of the Express Link system, and therefore, even that freight is partly attributable to Lakeville's participation in that system. Furthermore, Link's use of Lakeville's safety department to meet all Department of Transportation requirements for driver hiring, drug screens, physicals, and road testing, which relationship is not encompassed within the contract between Link and Lakeville, is indicative of an interrelationship between separate departments within a single employer.

Finally, the same evidence supports a finding that there is in fact a centralized control of labor relations between Link and Lakeville. Given Martin's role in the common management of Link and Lakeville, the fact that both Martin and Daker set Link

drivers' wages and wage progression schedule also supports such a conclusion. The evidence that both Link and Lakeville supervisors participated in Link employees' evaluations, and Lakeville employees have served as temporary Link terminal managers also show a centralized control of labor relations between the two companies.

The single employer status between Link and Lakeville is also characterized by the absence of arm's length relationship between Link and Lakeville. This finding is again supported by the fact that there is no evidence of a contract or sub-contract between Link and Lakeville specifically regarding the broad input that Lakeville's safety department exercises over Link on many important matters, which are outlined above. This finding is further supported by the evidence that during the time when Link's terminal manager position was vacant, several of Lakeville's employees temporarily filled these positions. Given the evidence discussed above, and in particular the lack of an arm's length relationship, I alternatively find that Link and Lakeville are alter egos within the meaning of the Act.

Finally, I find that Link and Lakeville are also joint employers under the Act. Lakeville's participation in Link's labor relations to the extent described above is sufficient constitute a joint employer relationship between the two companies.

The Relationship between Link and Other Companies

I find that Link is not a joint employer with the supplier companies. As discussed above, the Board's standard requires that the entities claiming joint employer status must both share or codetermine matters governing the essential terms and conditions of employment. The evidence shows that, although Link may exercise some control over the temporary drivers, it does not affect the terms and conditions of their employment to the extent that it may be deemed a joint employer with the supplier companies.

The record reveals that the supplier companies control all the matters regarding the hiring, firing, discipline, and benefits of the temporary drivers. Although Link may have direct and supervise the temporary drivers referred to its facility, I find that Link's role is insufficient to meaningfully affect the terms and conditions of the temporary drivers' employment. The Board held that such "limited and routine [supervision and direction] considered with [the Employer's] lack of hiring, firing, and disciplinary authority, does not constitute sufficient control to support a joint employer finding." *TLI, Inc.*, 271 NLRB at 799.

The Appropriate Bargaining Unit

At issue is whether the petitioned-for bargaining unit of permanent full time and regular part time employees at Link's McCook facility is appropriate, or if the temporary employees must also be included in the minimum appropriate unit for collective bargaining under the Act. The Act does not require that the bargaining unit be the *only* appropriate unit, or the *ultimate* unit, or even the *most* appropriate unit; the Act only requires that the petitioned-for unit be an appropriate one, such that employees are insured "the fullest freedom in exercising the rights guaranteed by this Act." *Overnite*

Transportation Co., 322 NLRB 723 (1996); *Talahassee Coca-Cola Bottling Co.*, 168 NLRB 1037 (1967); *Morand Beverage Co.*, 91 NLRB 409 (1950) enf'd. 190 F.2d 576 (7th Cir. 1951). The burden is on the employer to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988).

The Board has reasonably broad discretion in determining what constitutes an appropriate bargaining unit. *Kalamazoo Paper Box Corp.*, 136 NLRB 134,137 (1962). However, a major determinant in an appropriate unit finding is the community of interests of the employees involved. "The community of interest test examines a variety of factors to determine whether a mutuality of interest in wages, hours, and working conditions exists among the employees involved." *Sturgis*, supra, at 8, citing *Kalamazoo*, 136 NLRB at 137; *Swift & Co.*, 129 NLRB 1391 (1961).

Based on the testimony and evidence presented at the hearing in this case, I find that the employer has failed to meet its burden of showing that the petitioned-for bargaining unit is inappropriate under the Act. With respect to the temporary drivers at Link's facility, I find that while they share some common interests with the permanent drivers, there also exists many interests that differ, particularly those involving wages, benefits, discipline, and terms and conditions of employment. The evidence reveals that Link exercises no authority and has no input regarding the temporary drivers' hiring, firing, wages, benefits, and work policies, and that the supplier companies have sole control in these material employment matters. Link's terminal manager testified that he has no knowledge of the temporary drivers' terms and conditions of employment or whether their terms and conditions were similar or different from those of his own employees.

In the instant case, I find that a "mutuality of interests in wages, hours, and working conditions," as set forth in *Sturgis* does not exist between the temporary and permanent drivers. The Petitioner is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *Purity Food Stores*, 160 NLRB 651 (1966); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965). Furthermore, it is well established that there are multiple ways in which employees may be appropriately grouped for purposes of collective bargaining; however, the Board need only determine the appropriateness of the petitioned-for unit. Thus, even though a community of interest may exist and the employer's suggested unit may be appropriate, the employer has not met the burden of showing that the petitioned-for unit is inappropriate in this case.

CONCLUSION

Based on the foregoing discussion, I conclude that Lakeville and Link are a single employer under the Act. I also find that in the alternative, Link and Lakeville Link are joint employers or alter egos. Furthermore, I conclude that the employer failed to meet

its burden with respect to the appropriate bargaining unit issue and the petitioned-for unit is appropriate under the Act.

177-1650; 530-4825-5000; 177-1642; 401-7550; 420-0150